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Current Topics.

Social Control through Law.

NOT the least hopeful sign of the times through which we are passing is the awakening, both here and in the United States of America, of the sense of the necessity of preserving the fundamental bases of our civilisation not only against the enemy outside its gates, but against those tendencies which may rot from within. The Oxford University Press has recently published in this country a Yale University Press publication by ROSCOE POUND, formerly Dean of the Harvard Law School, entitled "Social Control through Law." It is a book to interest both lawyers and laymen of the old and the new world. Under four chapter headings, "Civilisation and Social Control," "What is Law?" "The Task of Law," and "The Problem of Values" the learned author surveys the most vital problems of modern civilisation with a gaze that takes in its long past, its stormy present, and its future direction. He emphatically rejects the theory that law cannot exist without the backing of force. "In the beginnings of English law," he writes, "we find one of the Anglo-Saxon kings exhorting his people as Christians to keep the peace instead of commanding them to do as subjects." "Religion," the writer says, "still has an intimate relation to the ideal element in law . . . Moreover, that something very like law can exist and prove effective without any backing of force is shown by the achievements of international law from the seventeenth century to the last World War." To-day, however, the ultimate effectiveness of law "depends upon the application of force exercised by bodies and agencies and officials set up or chosen for that purpose." Force, however, is not sufficient and "the law must function on a background of other less direct but no less important agencies, the home and home training, religion and education." Recent inquiries into the causes of increased infractions of the law by juveniles lend strong support to that view. "Adjustment and order," he writes, "must rest ultimately on force even if they are possible chiefly because of habits of obedience on the part of all but an anti-social residuum which must be coerced." On this subject it is disturbing and thought-provoking to find the learned author write: "What the power theory may mean in action has been exemplified in recent times in the identification of international law with power which has been leading to its undoing." Perhaps from this side of the Atlantic one may venture the belief that it is the divorce of international law from the power that supported it that led to its destruction by the powers who were its avowed enemies. The anti-social residuum exists in the international as well as in the national milieu. On the limitations of law, its inability to provide either a complete preventive or a complete remedy, and the difficulty of enforcing it when it rests with the individual to set it in motion, the writer makes out a strong case. The task of law is "to find how to recognise the claims of A and those of B without destroying each other, and without leaving it to A and B to seek a solution by trying each to destroy the other." For his measure of values for law, Dean POUND suggests co-operation towards civilisation. Law always tends to reflect the ideals of an out-of-date social order. For instance, "the system described in LYTTELTON'S tenures was moribund when the book was written," and international law still has for its background a picture of personal sovereigns having their relations and conduct adjusted and guided. Law to-day must again be adjusted to the present social and economic order and one of America's most distinguished jurists points the way.

The British Records Association and Salvage.

THE British Records Association, whose chairman is the Master of the Rolls, has rendered invaluable service in the past in publishing information encouraging intelligent release of paper for salvage and discouraging indiscriminate destruction. We are glad to be able to draw readers' attention to its latest memorandum on the subject. Copies of the Memorandum may be obtained on application to the Association, c/o the Public Record Office, Chancery Lane, W.C.2. It states that the question: "What may we destroy?" cannot really be separated from the question "What must we keep?" In a very large proportion of modern offices it is stated there is in fact an *enormous survival of quite unnecessary papers.* Any solicitor (to take one example), if he thinks of the way in which at the conclusion of the process of drawing up an agreement, drafts, duplicates and subsidiary documents from every stage of the affair are habitually bundled up and put away in the paper room without any attempt at weeding, will be able to confirm this. The memorandum contains useful schedules of classes and types of documents which should always be preserved or should be considered for preservation, such as manuscript maps and plans, documents relating to a public office, and deeds relating to land tenure, and classes and types of modern documents which may generally be destroyed, such as bank passbooks, cancelled cheques, expired leases and short term agreements. The very comprehensive schedules are alone worth possessing, and we venture to express the view that no solicitor should be without this highly useful memorandum.

The New War Damage Bill.

IT is perhaps a little early to hail the new War Damage Bill as a triumph of consolidation. None the less, just as the original Act of 1941 was an able effort to draw the line between damage that could and damage that could not be subject to schemes of compensation, so the present Bill is a substantial achievement, having regard to the necessarily piecemeal nature of the legislation. In the second report by the joint committee of the Lords and the Commons on the War Damage Bill it is stated that owing to the pressure under which a hitherto unexplored subject of great complexity and range had to be dealt with in the principal Act of 1941, both the arrangement and the wording and in some cases the substance of the Act were inevitably defective. The amendments made in the course of the Bill's passage through Parliament had already nearly doubled its bulk, and after it had been in operation for a year the amending Act of 1942 was passed. There was also an Act of 1943, which, however, made only one substantial amendment. The committee expressed its satisfaction that the Bill effected a substantial improvement in arrangement and some improvement in wording which would clarify without altering the law. The committee had made such amendments as seemed to them to be necessary to the improvement of its form, and were of the opinion that the Bill as amended was pure consolidation and represented the existing law as regards war damage. The appendix to the report indicated a number of points to which the committee felt that the attention of Parliament should be called. As to the title, the committee considered it expedient that the title should show clearly which of the enactments relating to war damage were the subject of the present consolidation, and in particular that it did not comprise the Landlord and Tenant (War Damage) Acts. With regard to cl. 69, relating to land held and used for charitable purposes of four classes, one of which was educational purposes (s. 39 of the 1941 Act), the committee were informed that the effect of the section had been misunderstood, and that a contention had been put forward on behalf of an educational charity that the purpose of the section was to give complete exemption in the case of charities of all the four classes where the specified conditions were satisfied, together with a further special relief in the case of educational charities, consisting of reduction of liability to one-third where the specified conditions were not satisfied. The committee were of opinion that the section, though it had been shown to be capable of being misread, was unambiguous, and they approved its reproduction in cl. 69 of the Bill in a form not capable of being misread in the sense mentioned. Another amendment of a

drafting character was designed to secure that payments should be made under s. 68 of the Act for certain laid-up sea-going ships in cases where the damage occurred before the schemes were in operation, as this was intended by Parliament in the amendment in para. 1 of Sched. III to the War Damage (Amendment) Act, 1942, and it was assumed by the Board of Trade and the Treasury that this was the effect of the amendment.

The New Planning Bill.

THERE are some to whom the word "planning" is anathema, whether on the ground that we ought to "keep our eyes on the ball" or because national planning may upset their private interests. The great majority of the population, however, support the Government in their view that without planning we may be robbed in peace of the fruits of victory in war. There has therefore been no lack of satisfaction at the introduction of a new Town and Country Planning (Interim Development) Bill, which aims at bringing the whole of England and Wales under planning control within three months after the date of its enactment. It will be recalled that the Uthwatt Committee recommended that the control necessary to prevent prejudicial development during and immediately after the war should extend over the whole country. At present there are no planning schemes in operation in many areas for the simple reason that the authorities concerned have not yet passed the necessary resolutions under the 1932 Act. Only from 4 to 5 per cent. of the area of the country is subject to planning schemes. Of the remainder, resolutions to prepare schemes have been passed with reference to 70 per cent. of the area, while in 26 per cent. of the area there have been neither resolutions nor schemes. To remedy this, the new Bill proposes that from the operative date all land not already subject to a scheme or resolution under the Town and Country Planning Act, 1932, will be deemed subject to a resolution to prepare a scheme under the Act. Local authorities in the areas affected will then be obliged to proceed with the preparation of planning schemes. Local authorities are to be enabled to exercise stronger control while preparing their planning schemes, so as to prevent their being impaired in advance. Power will be given to the local authorities to refuse to allow replacement of an existing building. Where, however, temporary buildings are urgently needed on old sites, development may be permitted for a limited period, with the right to secure removal of temporary buildings at the end of that period without additional compensation. Authorities are to be empowered to postpone or refuse applications to develop, and, with the Minister's consent, will be able to revoke or modify a permission for interim development already given. Where the Bill prevents the completion of development which has been lawfully begun, developers will be able to recover compensation for abortive expenditure. The Minister may require applications for interim development to be made to him in the first instance, and he is also given power to constitute a joint planning committee to cover a particular area without the request of a constituent authority, such a committee to have control over interim development in the area. The Bill will no doubt stir up at least as much controversy as did its progenitor, the Uthwatt Report, but it is safe to prophesy that our present Parliament will pursue that controversy to a just and equitable conclusion.

Powers of Settled Land Act Trustees.

A BILL which was announced by the Attorney-General to be "wholly non-controversial" was given a second reading in the Commons on 20th April. This was the Settled Land and Trustee Acts (Court's General Powers) Bill, which is to extend the powers of the courts to sanction expenditure out of capital in respect of repairs, maintenance and management of settled land, subject, as the Attorney-General explained, to rather strict conditions. The first was that the person who would normally bear the expenditure, who would be the tenant for life, had to satisfy the court that his available income from all sources was insufficient to meet this expenditure on maintenance or management which would normally fall to be met out of income and he had to show that it was due to war circumstances, such as the large increase in direct taxation, or failure of rents and other results of war damage. Secondly, he had to satisfy the court that the expenditure was in the interests of all concerned, and that it was in the interests of the property and the upkeep of the property, whether agricultural or house property, that the expenditure should be made. Mr. HUTCHINSON stated that there were many people besides tenants for life who found that they must meet out of capital, expenses which would normally be met out of income. He asked whether, at a later stage of the Bill, its usefulness might not be increased if the power to expend capital moneys was to be extended in certain directions. He also asked whether, within certain limits and in respect of certain classes of expenditure, the tenant for life could not be saved the additional expense of making an application to the court. In answer to a question by Sir ERNEST SHEPPERSON, the Attorney-General said that the court was enjoined to look at the circumstances of the case, and the court would not sanction this resort to capital, which they always leaned against, if there was any reason to suppose that the expenditure could be made by the life tenant merely making the sacrifices which people with similar incomes were making and were expected to make, in present circumstances. Answering a question by Mr. KIRKWOOD, the Attorney-General said that the tenant would be required to undergo a means test. The Bill was committed to a committee of the whole House for the next sitting day.

The Rent Acts.

ONE of the Rent Act anomalies which has received insufficient publicity is the disparity between the basis of calculation of the standard rent for houses controlled under the 1920 Act and those controlled under the 1939 Act. The basis under s. 12 (1) (*a*) of the 1920 Act is "the rent at which the dwelling-house was let on the third day of August, 1914, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let." By s. 3 (1) and the First Schedule of the 1939 Act, s. 12 (1) (*a*) is applied to houses brought under control by the latter Act, with the modification that 1st September, 1939, is substituted for 3rd August, 1914. The matter has been taken up by the National Federation of Property Owners, who passed a unanimous resolution on 11th February, 1943, urging the Government to introduce legislation forthwith providing for an increase of 25 per cent. of the net rent of all houses still controlled by the 1920 Act. A committee of the Federation prepared a memorandum for submission by deputation to the Minister of Health, and on 16th March the deputation was received. The memorandum traced the history of the Rent Acts and stated that notwithstanding the decontrolling provisions of the 1923 Act, modified in due course by Acts of 1933 and 1938, a very large number of tenants were to-day still occupying the same houses at rents based on 1914 figures. The owners of such houses had nevertheless to pay the same increase in tax and war damage contribution, and consequently found considerable difficulty in meeting the increased cost of repairs on an income based upon a 40 per cent. increase of basic rent fixed for 1914. There had been an increase in the standard of maintenance and repair, and small war damage repairs costing under £5 had to be done by the owner. Building costs were also heavier, and the courts were too lenient to tenants who were in arrears with their rent, and suspended orders for possession frequently rendered necessary second applications to the court, with resultant expense. Meanwhile tenants were earning higher wages, and subjecting the property to increased wear and tear by taking in lodgers. The Federation referred to the recent criticism by Lord Justice SCOTT of the words of s. 12 (1) (*a*) of the 1920 Act in *Davies* v. *Warwick* (*ante*, p. 121), in which he characterised its language as "hasty and ill-considered." The memorandum proposed that private owners should have similar powers of recovery to those enjoyed by local authorities, and that a further authorised increase of 25 per cent. of the net rent of all houses controlled by the 1920 Act should be authorised by legislation forthwith. The deputation was assured that the Minister would give careful consideration to the representations in the memorandum and would welcome further constructive proposals as well as discussions with the representatives of the Federation.

Recent Decisions.

In *Mash and Austin, Ltd.* v. *Postlethwaite*, on 16th April (p. 157 of this issue), the Divisional Court (CHARLES, TUCKER and CROOM-JOHNSON, JJ.) held that a person who bought growing strawberries on the terms that the price was to be ascertained when they were picked, packed and delivered partly in relation to the cost of these services, was not a "grower" within the Soft Fruit (Maximum Prices) Order, 1942, as the property in the fruit had not passed before severance from the soil.

In *Minister of Supply* v. *British Thomson Houston Co., Ltd.*, on 19th April, 1943 (*The Times*, 20th April), the Court of Appeal (THE MASTER OF THE ROLLS, MACKINNON and GODDARD, L.JJ.) held that the words "may defend any action" in s. 20 of the War Department Stores Act, 1867, included the power to defend a counter-claim, and the words "unless he elects to rely on the common law rule that he cannot be sued" could not be implied as a qualification. The section was made applicable to the Ministry of Supply by the Schedule to the Ministry of Supply Act, 1939.

In *Racecourse Betting Control Board* v. *Secretary of State for Air*, on 21st April (*The Times*, 22nd April), UTHWATT, J., held that the proceedings before the tribunals set up under the Compensation (Defence) Act, 1939, were limited to ascertaining the amount of compensation, that the tribunals were not courts, but proceedings before them were an arbitration within the Arbitration Act, 1889, and that an order could be obtained from the High Court to enforce their awards. Therefore, notwithstanding that the decision of the tribunal was expressed to be final, the court had jurisdiction to hear a motion to set aside an award by the tribunal.

Procedure in 1942.

We have already dealt with cases on procedure, reported from January to June, 1942. See the articles entitled, "Procedure in 1942," at 86 Sol. J. 291, 295, 305, 317, 327–8. See also "Production injurious to the Public Interest," at 87 Sol. J. 61–63, 71, 79–80, upon questions arising out of *The Thetis* case: *Duncan* v. *Cammell, Laird & Co., Ltd.* [1942] A.C. 624; 86 Sol. J. 287.

The present articles will discuss the points on procedure decided in the latter half of 1942.

The Decisions Summarised.

The ambit of the National Arbitration Tribunal has been extended by the House of Lords so as to include a dispute with a local authority upon "making up" the war service pay of its officers (*National Association of Local Government Officers* v. *Bolton Corporation*). Where, at the date of an amendment of a writ, the cause of action is statute-barred, an amendment setting up a new cause of action has been disallowed (*National Provincial Bank, Ltd.* v. *Gaunt*). Where a respondent to a divorce petition, alleging desertion, is residing in enemy territory, the court will not dispense with service of the petition (*Read* v. *Read*). Particulars will not be ordered of a condition of mind which is alleged as a fact (*Burgess* v. *Beethoven Electrical Equipment, Ltd.*). An objection to answer an interrogatory in an action for slander actionable *per se*, that the answer might tend to prove adultery, or to expose the plaintiff to the risk of ecclesiastical penalties, is inadmissible (*Blunt and Park Lane Hotel, Ltd.* v. *Briscoe*). An interrogatory may be put to a person upon the state of his health at a given time (*Model Farm Dairies (Bournemouth), Ltd.* v. *Newman*). An order for relief against forfeiture, even if no "liberty to apply" be given, may be extended as to time limit (*Chandless-Chandless* v. *Nicholson*). Under the "slip rule," a judge can subsequently deal with costs for which counsel, at the hearing of an adjourned summons, has omitted to apply (*Re Inchcape; Craigmyle* v. *Inchcape*). In proceedings in prize, in the absence of any wrong conduct on the part of the Crown, the Crown is immune from costs (*The Panaghiotis*).

National Arbitration Tribunal.

A dispute concerning a claim by the National Association of Local Government Officers that it be a condition of service of the officers employed by a local authority that, if they were "called up," the difference between their service and their civil pay should be made up to them, under the discretion conferred by the Local Government Staffs (War Service) Act, 1939, s. 1, is a "trade dispute" within the meaning of the Industrial Courts Act, 1919, s. 8, the Defence (General) Regulations 1939, reg 58AA, Pt. V, and the Conditions of Employment and National Arbitration Order, 1940, art. 7. The dispute is accordingly within the competence of the National Arbitration Tribunal (*National Association of Local Government Officers* v. *Bolton Corporation* (1942), 2 All E.R. 425), reversing an order of the Court of Appeal (1941), 2 All E.R. 800; 86 Sol. J. 207 (MacKinnon and du Parcq, L.JJ., and Bennett, J.), and restoring a decision of the Divisional Court (1941), 1 All E.R. 413 (Viscount Caldecote, L.C.J., and Tucker, J., Atkinson, J., dissenting).

A "trade dispute," for this purpose, means "any dispute or difference between employers and workmen . . . connected with the employment or non-employment, or the terms of the employment or with the conditions of labour of any person" (s. 8 of the Act of 1919). And "workman" means "any person who has entered into or works under a contract with an employer whether the contract be by way of manual labour, clerical work, or otherwise . . ." This includes "administrative, professional and technical officials of the corporation." An undertaking by a corporation that if an official ceases to be employed, his civil pay will be made up, is a "contractual term of his employment"; a dispute thereon is connected with the "terms of the employment" and is a "trade dispute" and cognisable by the Tribunal.

To the above definition of "workman" the *ejusdem generis* rule does not apply. That rule is not a rule of law, but a rule of construction. It presupposes a "*genus*"; but here the only *genus* is "contract with an employer." The words "or otherwise" were "intended to embrace the entire range of wage earning or salaried employment. 'Workman' means anyone, male or female, who works under a contract with an employer subject, no doubt, to the general scope of the legislation. For instance, a lady's maid may be an exception."

See the speech of Viscount Simon, L.C., at pp. 428, 429, and the speech of Lord Wright at p. 433.

Writ: Statute-barred Amendment.

Where, at the date of a proposed amendment of a writ, the cause of action is statute-barred, an amendment substituting an entirely different cause of action should not be allowed: *National Provincial Bank* v. *Gaunt* (1942), 2 All E.R. 112 (Court of Appeal: Lord Greene, M.R., MacKinnon and Goddard, L.JJ.).

On 12th February, 1929, the bank, with other banks and the Inland Revenue, made an agreement with Gaunt who acknowledged owing each £40,000. In February, 1935, G acknowledged his indebtedness under the agreement. In January, 1941, the plaintiffs asked for a renewal of the acknowledgment; G refused. The writ claiming £40,000 under the agreement was issued on 3rd February, 1941. Oliver, J., held that the agreement, being a composition, was void for want of registration. At the trial, the bank asked for leave to amend the statement of claim by a claim for money lent "before February 12, 1929."

This litigation, Lord Greene, M.R., said, was a good example of "the confusion, inconvenience, expense and delay . . . when the simple common-sense principles of procedure are not followed" (at p. 113). The amendment would have prejudiced the defendant's position and prevented him from relying on the Statute of Limitations. Oliver, J., at the trial in April, 1942, having found that the agreement, being unregistered, was void, had said that the cause of action "behind it all" is a cause of action for money lent. If so, the writ, as amended, should have been wide enough. He gave the plaintiffs leave, however, to amend and from this order the defendant appealed. Such an amendment would have prevented the defendant from setting up the statute, whereas if the bank had to sue in April, 1942, for money lent before 1935, they would have been statute-barred. The endorsement, Lord Greene, M.R., continued, was not for money lent, because, *inter alia*, particulars were not given. Moreover, the application to amend should have been made several months before the trial, when the bank's solicitors had first intimated their intention of applying for leave to amend at the trial.

> ". . . It is most undesirable that there should be abroad any impression that people can be as lax as they like in the matter of obeying the rules of pleading and then put the matter right by the indulgence of the court at the hearing. Such a course involves hardship, delay and expense, and although the court always has a full discretion in the matter of amendment on all the facts of the case, it must not be taken for granted, certainly so far as I am concerned, that any such leave ought to be given necessarily in a case of this kind" (at p. 116).

Goddard, L.J., pointed out that "it can never be right to allow an amendment which will deprive a defendant of the right to plead the Statute of Limitations" (at p. 117). Lord Esher, M.R., in *Weldon* v. *Neal* (1887), 19 Q.B.D. 394, 395, had said: "We must act on the settled rule of practice, which is that amendments are not admissible when they prejudice the rights of the opposite party as existing at the date of such amendments."

Divorce: Dispensing with Service.

Under s. 42 of the Matrimonial Causes Act, 1857, the court may dispense with service, but where the respondent wife to a divorce petition based on desertion is resident in enemy territory, the court will not dispense with service (*Read* v. *Read* (1942), 2 All E.R. 423).

This case had been before the Court of Appeal which had dismissed an application to dispense with service under Ord. XIX, r. 14B, the jurisdiction there not extending to matrimonial causes ((1942), 1 All E.R. 226). In that case, Goddard, L.J., declared that an originating application under s. 42 of that Act would still be possible, but that, so far as was known, no order under that proviso had ever been made.

Henn Collins, J., pointed out that the power was exercised in *Cook* v. *Cook and Quaile* (1858), 28 L.J.P. & M. 5; there the respondent wife and the co-respondent had sailed for Australia where all track of them had been lost. Moreover, "this dispensing power has been exercised in proper cases during this war," e.g., where a respondent has already obtained a decree in a German court ((1942), 2 All E.R., at p. 424).

In the present case, however, no substituted service would be effective; and even if notice of the suit did come to the wife, she could do nothing to defend herself. Moreover, she had been prevented by *vis major* from returning to her husband, even had she wished, at least for some years before the petition. The summons was accordingly dismissed.

Particulars: Condition of Mind.

Where a person claims under an agreement, commission from the defendants on payments received from government contracts and the defendants plead that the agreement was intended to be carried out by the offer of bribes to government officials, under Ord. XIX, r. 22, no particulars will be ordered of this plea (*Burgess* v. *Beethoven Electrical Equipment, Ltd.* (1942), 2 All E.R. 658).

By that rule, "wherever it is material to allege notice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred."

The rule meant what it said, observed Lord Greene, M.R. (at p. 658). It had been said that if it were alleged that a party *knew* a certain fact, particulars of his knowledge would be ordered (*The Yearly Practice*, 1940, p. 333). For this there was no justification in the rule which on the face of it appears "clear and unqualified." Rule 23 states that notice may be pleaded as a fact unless the precise terms or the circumstances are material. In r. 22, no such qualification is contained.

"A person who pleads a condition of mind as a fact is a person who has complied with all the rules so far as regards that particular matter, and cannot be compelled to give further particulars" (at p. 660).

INTERROGATORIES.

(*a*) *Imputation of unchastity.*

In an action of slander by a married woman based upon an imputation of unchastity, where the defendant pleads justification, giving particulars of the plaintiff's adultery, the plantiff cannot refuse to answer interrogatories on the ground that her answers might tend to prove her adultery or to expose her to punishment in the ecclesiastical courts, or to cause her to be branded as an evil liver and to be refused the sacrament by her parish minister (*Blunt* v. *Park Lane Hotel, Ltd. and Briscoe* (1942), 2 All E.R. 187).

The point about ecclesiastical punishment, said Lord Clauson in the Court of Appeal, "might well have been good in the eighteenth century when such punishment was still in fact meted out in those courts . . . but I feel no doubt that (save possibly as regards the case of a spiritual person) the jurisdiction of the ecclesiastical courts has fallen into abeyance and must now be treated as obsolete. I asked in vain for an instance within the last 150 years in which this jurisdiction was exercised" (at p. 188). The suggestion that her answer might brand her as an evil liver with the risk of refusal of the sacraments was "fanciful."

The rule, said Goddard, L.J. (at p. 189), is that "no one is bound to answer any question if the answer thereto would, in the opinion of the judge, have a tendency to expose the deponent to any criminal charge, penalty or forfeiture which the judge regards as reasonably likely to be preferred or sued for." The words are those of Stephen, J., in *Lamb* v. *Munster* (1882), 10 Q.B.D. 110. It is "purely fantastic" to suppose that, except in the case of a clerk in holy orders, there was any reasonable likelihood of being exposed to ecclesiastical penalties. In the days of Lord Hardwicke, a real risk of these proceedings existed; the ecclesiastical courts exercised "a very active jurisdiction over the laity in criminal matters." Their decrees were enforced by the chancery. This jurisdiction has been long obsolete.

By the Ecclesiastical Courts Act, 1855, these courts were deprived of jurisdiction in cases of defamation. True, they were not then expressly deprived of jurisdiction in cases of immorality; it was generally recognised that such jurisdiction was obsolete (cf. *per* Lord Penzance, in *Phillimore* v. *Machon* (1876), 1 P.D. 481). The promoter in a criminal ecclesiastical suit cannot proceed as of right; he must petition in open court; the defendant may appear and object, and the judge has a discretion in granting leave (*Maidman* v. *Malpas* (1794), 1 Hag. Con. 205, *per* Sir William Scott). Spiritual courts have "unfettered disciplinary jurisdiction over clerical persons," Goddard, L.J., continued, but save for unauthorised acts over the fabric or ground of a church or churchyard, and offences by churchwardens concerning their office, "their jurisdiction is obsolete and beyond recall" ((1942), 2 All E.R., at p. 190).

The decision in *Redfern* v. *Redfern* [1891] P. 139, settled the practice in discovery in the Divorce Division where the suit was for divorce on the ground of adultery. To the present case it had no application.

(*b*) *State of person's health.*

"To the best of your present knowledge, information and belief, were you not a carrier of the typhoid germ in the year 1936?" This interrogatory is admissible (*Model Farm Dairies, Ltd.* v. *Newman* (1942), 2 All E.R. 445).

N was sued for supplying milk alleged to contain typhoid germs. He claimed over against Hambros, alleging that the typhoid germ in his cows was due to the fouling of a stream through his farm by a drain from Hambros' house. The suggestion was that H was an unwitting carrier of the typhoid germ.

You may ask a man, said Goddard, L.J., what was the state of his health at a certain period, even though the answer may depend upon what the doctors told him. "Did you suffer from typhoid fever in 1936"? is admissible. In proposals for insurance policies, the question is very often asked whether or not parents have had, or have died of, certain diseases (at p. 446). To ask a person about his state of health is very different from asking him his opinion whether a work of art is genuine —the interrogatory disallowed in *Rofe* v. *Kevorkian* (1936), 2 All E.R. 1334.

The case was analogous, said du Parcq, L.J., to a case in which a question is put such as: "Were you suffering from tuberculosis" at such and such a date? "Did your child have measles" at such and such a date? In the present case, if there were any real doubt, Hambros would be safeguarded (at p. 447).

LIBERTY TO APPLY.

Where a landlord obtains judgment in an action for possession on the ground of the non-payment of rent, and the tenant is granted relief from forfeiture upon terms, one of which is that he must dispose of the claim for Sched. A tax within three months, there is power to extend the time for the purpose of giving this equitable relief, even though the master has not granted "liberty to apply," and even though the application is made after the time limit has expired (*Chandless-Chandless* v. *Nicholson* (1942), 2 All E.R. 315).

The Court of Equity, said Lord Greene, M.R. (at p. 317), had always regarded the condition of re-entry as merely a security for the payment of rent. It is, of course, desirable that "liberty to apply" should be expressly reserved. But, despite the omission of these words in this order, "an order of this kind giving relief on terms to be performed within a specified time is one in respect of which the court retains jurisdiction to extend that time if circumstances are brought to its notice which would make it just and equitable that extension should be granted."

If an order is made by consent, that fact should "invariably" be stated on the order. There is a great difference between a "consent order" and an order embodying provisions to which neither party objects. Submission to an order does not turn it into a "consent order."

SLIP RULE; VARYING COSTS ORDER.

Where, at the hearing of an adjourned summons, the judge orders the costs of the plaintiffs and the defendants to be taxed as between solicitor and client and to be paid out of the estate, but counsel accidentally omits to ask for the costs incurred before the summons in collecting evidence upon domicil and in taking counsel's opinion, the judge, under the "slip rule," may allow the application for these costs (*Re Inchcape* (1942), 2 All E.R. 157).

By Ord. XXVIII, r. 11, "Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion or summons without an appeal."

In *Fritz* v. *Hobson* (1880), 14 Ch. D. 542, Fry, J., made an order in similar circumstances. It had been submitted that the slip rule did not apply to an accidental omission of counsel to ask the court for something which ought to have been provided for.

Fry, J., said, however, that counsel's omission was "very natural at a time when counsel's attention was directed to matters of greater importance." In substance, the motion was before him at the trial. So, in the present case, Morton, J., declared that he had a "sufficiently clear recollection of the evidence" to feel sure that if, at the time, he had been asked to make the order, he would have done so ((1942), 2 All E.R., at p. 160). An "accidental omission" on the part of counsel to ask for costs whereby the judge did not make the order that he would otherwise have made, is an "accidental slip" within the meaning of the rule.

COSTS IN PRIZE: CROWN IMMUNE.

Where, on the outbreak of war, a neutral vessel is seized and condemned as prize and the shipowner is awarded by the registrar as compensation in lieu of freight a sum greater than the Crown has offered, but less than the claim, in the absence of any wrongful or oppressive conduct on the part of the Crown, costs cannot be awarded to the shipowner against the Crown. The Crown is not in the position of an ordinary litigant (*The Panaghiotis* (1942), 2 All E.R. 325).

In prize cases "pure and simple" it is admitted that the Crown is not to be mulcted in costs if no more is done in the litigation than to ask the court to decide the question of principle, as the case may be, on the one hand, or the amount to be paid, on the other. There is no distinction, in principle, said Lord Merriman, P., between such cases and a case where the only issue, as here, is one of amount (at p. 526). "It is admitted in this case that there was no oppressive or improper conduct on the part of the Crown in this litigation which should take the case out of the ordinary rule, and I think, therefore, as a matter of principle, that the registrar came to a wrong conclusion, and that in this case he ought not to have awarded costs to the claimants" (at pp. 526, 527).

Obituary.

SIR STANFORD LONDON.

Sir Stanford London, C.B.E., late Chief Inspector of Taxes, Barrister-at-Law, died on Monday, 19th April, aged eighty-two. He was called by Gray's Inn in 1894.

MR. A. M. ALFORD.

Mr. Albert Martin Alford, solicitor, of Messrs. Dunn & Baker, solicitors, of Exeter, died on Tuesday, 13th April, aged seventy-two. He was admitted in 1901.

MR. H. W. CRAWFORD.

Mr. Hamilton Walker Crawford, solicitor, of Messrs. Crawfords, solicitors, of Swansea, died recently, aged sixty. He was admitted in 1905, and was a past President of the Incorporated Law Society of Swansea and District.

MR. F. A. WADSWORTH.

Mr. Frederick Arthur Wadsworth, solicitor, of Messrs. Watson, Wadsworth & Crewdson, solicitors, of Nottingham, died on Thursday, 15th April, aged seventy-one. He was admitted in 1894.

A Conveyancer's Diary.

Assents.

Two subscribers have written to me about my recent article on stamp duty on assents. It will be remembered that I discussed the decision of Macnaghten, J., in *G.H.R. Company* v. *Inland Revenue Commissioners* [1943] W.N. 61, where the learned judge held that *ad valorem* stamp duty was payable on an assent made by personal representatives on completion of a contract for sale entered into by their testator in his lifetime. I expressed the view that this decision should be accepted by the profession as correct, and that in future it would be imprudent for a purchaser's solicitors, who accept an assent in such circumstances, to refrain from getting it stamped. I added that if the true nature of the transaction became known to a later purchaser, as it might well do, the latter would be entitled to object to an unstamped assent among the documents of title.

One correspondent writes that I have omitted to deal with an important practical point which he states as follows: "Where there is nothing on the abstract to indicate under what equitable title an assent in favour of A is made, can a purchaser from A insist on being furnished with particulars, in order to ascertain whether the assent should have borne a stamp?" This is, indeed, a serious point: if particulars of the equitable title could be asked for merely for this reason, nothing would be left of one of the most important features of the "curtain" system introduced in 1926. It will be remembered that the specimen abstracts in the Sixth Schedule to the Law of Property Act proceed on the footing that where an assent is a link in the title it is not necessary to justify the assent by abstracting anything except the part of the will which appoints the assentors as executors and the grant of probate to them. The basis for this practice is, I conceive, Ad. of E.A., s. 36 (7), which enacts that "An assent or conveyance by a personal representative in respect of a legal estate shall, in favour of a purchaser, unless notice of a previous assent or conveyance affecting the legal estate has been placed on or annexed to the probate or administration, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him, and upon the proper trusts, if any, but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon." (Under subs. (11) "purchaser" in s. 36 means only a purchaser for money or money's worth.) According to the note in the current edition of "Wolstenholme," subs. (7) was meant to meet the difficulty raised by *Re Balen and Shepherd's Contract* [1924] 2 Ch. 365, where Tomlin, J., held that a purchaser was entitled to look behind an abstract disclosing an assignment by a personal representative to a person whose beneficial title was not shown. It is not clear that it has such an effect in all cases, but where the title is correctly deduced it normally does so. The position is plainly set out in the penultimate paragraph of the judgment of Bennett, J., in *Re Duce and Boots Cash Chemists (Southern), Ltd.'s Contract* [1937] Ch. 642, 650. "The meaning and effect of s. 36 (7) is that a purchaser when investigating title may safely accept a vesting assent as evidence that the person in whose favour it has been made was the person entitled to have the legal estate conveyed to him, unless and until, upon a proper investigation of the vendor's title, facts come to his knowledge which indicate the contrary." In *Re Duce and Boots*' the vendor had abstracted a title which showed on its face beneficial interests conflicting with that of the person in whose favour the assent was made. Obviously, the purchaser was on inquiry, and, since the assent was only "sufficient," and not "conclusive," evidence of the fact that it was made in favour of the right person, he was entitled and bound to follow up the discrepancy disclosed to him. But "unless and until on a proper investigation of the title" the purchaser *is* put on notice that the contrary is the case, he can and must assume that the assent was made in favour of the right person, and he cannot call for the equitable title. I do not think that any question of stamping can affect that basic proposition. An unstamped assent does not, of itself, put anyone on inquiry since such a document may well be perfectly proper, and the purchaser will not know anything of the contents of the testator's will except the passage appointing executors, assuming that title is deduced according to Law of Property Act, s. 206, and Sched. VI. Of course, if there is something to put the purchaser on inquiry, as in *Re Duce & Boots*', the whole beneficial title will have to be gone into and an objection as to stamps is legitimate and necessary. But I do not think that the beneficial title can be called for *by reason only* of the fact that the abstract shows an unstamped assent.

My second correspondent raises an interesting point which has puzzled me a good deal. Unfortunately his letter is too long for citation verbatim. He gives various instances of cases, other than those of a purchaser from the testator or the executors, in which an assent would require an *ad valorem* stamp and concludes that "if the transaction is one which does not attract *ad valorem* stamp duty, or if *ad valorem* stamp duty has been paid on a prior document which is part of such transaction, then an assent to complete it will be free of duty, but an assent which is used in lieu of a conveyance which would attract *ad valorem* duty must be stamped as a conveyance." With this general statement I agree. He proceeds, however, to say that "acting for a purchaser as in *G.H.R. Co., Ltd.* v. *I.R.*, I would not accept an assent. It would have to contain complete recitals to show that the person in whose favour it was made was entitled to an interest in the land, and these recitals would show that the assent was in effect a conveyance without the implied covenants for title." He adds a postscript: "I would like to know what (if any) covenants for title your correspondent thinks the purchaser in *G.H.R.* v. *I.R.* got."

There are two different points here, which it might perhaps be as well to separate expressly. First, it is suggested that an assent in favour of a purchaser would need recitals showing his interest: if it had full ones, of course, they would disclose that the transaction was one attracting *ad valorem* duty. But I see no need for any recitals if it is desirable to dispense with them. The specimen assents given in Forms 8 and 9 in Sched. V of the Law of Property Act contain no recitals at all, and in my opinion one should only use recitals in assents where it is useful to do so. The second point is much more serious: it is that a purchaser's advisers ought not to accept an assent at all in such a case, because, being expressed to be made by the vendors "as personal representatives," the covenants for title implied by those words are not full enough. (I imagine that the purchasers in *G.H.R. Co.* v. *I.R.* got an assent in this form, as I cannot see what other form would be possible.) I apprehend that my correspondent's point is that the testator in his lifetime contracted to sell "as beneficial owner" and that the purchaser got something less good in taking an assignment from persons expressing themselves to be acting "as personal representatives." The covenants for title implied by those words are, of course, less extensive than those implied by the phrase "as beneficial owner." Obviously a contract to sell is enforceable by and against the personal representatives of the vendor if he dies before completion. That is quite clear from the relevant passages in "Fry on Specific Performance" and "Williams on Vendor and Purchaser." But I cannot conceive (though admittedly I can find no direct authority on the point) that a personal representative is compellable in such circumstances to assign "as beneficial owner." Clearly that would be too onerous. If I am right so far, it follows that the position is exactly the same whether the assignment takes the form of a conveyance by deed or an assent. I have never heard of an assent being made "as beneficial owner"; indeed, on the wording of A.E.A., s. 36 (3), I doubt if it is possible for any such covenant for title to be implied in an assent. But, equally, a conveyance by a personal representative would not have such a covenant. I can see no reason to differentiate. It is, I think, arguable that a purchaser could refuse altogether to proceed on the ground that no one can be made to convey as beneficial owner in accordance with the contract. I am doubtful if such an argument would prevail: but, however that point was decided, nothing turns on the difference in this matter between assent and conveyance, for there is none.

Practice Note.

In the High Court of Justice.
Probate, Divorce and Admiralty Division.
(Probate.)

Execution of Trusts (Emergency Provisions) Act, 1939.

The President has directed the following change in practice:—

(1) On and after the 10th May, 1943, the practice whereby Letters of Administration with Will annexed are granted to the Attorney of an Executor who has delegated his functions as Personal Representative under Section 1 (1) or Section 1 (5) of the Act will be discontinued and a grant of Probate will, in such a case, be made to such Executor, solely or jointly with another Executor.

(2) Under Section 1 an Executor cannot delegate his functions as Personal Representative by an Instrument executed before the death of his Testator but may do so by an Instrument executed after the death but before obtaining Probate.

(3) The Power of Attorney delegating such functions must recite that it is given under the Act but may be in general terms and need not refer to the Will of a particular person.

(4) The Inland Revenue Affidavit and the Affidavits to lead the Grant must be deposed to and the testamentary papers to be admitted to Probate marked by the Attorney on behalf of the Executor, as permitted by the Provisional Non-Contentious Probate Rules, 1943, numbered 49A of the Principal Registry Rules and 60A of the District Registry Rules.

(5) The Attorney of such Executor must depose in the Oath to lead the grant that he has been duly appointed under the provisions of Section 1 of the Act.

H. F. O. Norbury,
Senior Registrar.

16th April, 1943.

Book Received.

The Conveyancers' Year Book, 1943. By Sir Lancelot H. Elphinstone, of Lincoln's Inn, Barrister-at-Law. Volume 4. Demy 8vo. pp. xl and (with Index) 250. London: The Solicitors' Law Stationery Society, Ltd. 25s. net.

Landlord and Tenant Notebook.

Standard Rent determined by Past.

THE Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 12 (1) (*a*), defined "standard rent" as "the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was *last let before* that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let"; a proviso dealt with progressive rents, and cases in which rateable value exceeds rent. The Rent and Mortgage Interest Restrictions Act, 1939, applies, by s. 3, the principal Acts to houses within certain rateable values and "in relation to any such dwelling-house as aforesaid, not being a dwelling-house to which the principal Acts applied immediately before the commencement of this Act" certain provisions of older Acts are to have effect as if modified by modifications prescribed in Sched. I. In the case of s. 12 (1) (*a*) of the 1920 statute, the modification is: "for the reference to the third day of August, nineteen hundred and fourteen, there shall be substituted references to the day before the date of the commencement of this Act."

The implications of this legislation were recently made manifest, in a way which may fairly be said to have astonished members of the court concerned, by *Davies* v. *Warwick* (1943), 87 SOL. J. 121 (C.A.). That the statutory reference back to some almost prehistoric letting might mean considerable hardship, that the hasty and ill-considered language might work injustice, and that house property had been made a dangerous form of investment, were among the observations made by Scott, MacKinnon and du Parcq, L.JJ.

The action was brought for recovery of rent paid in excess, and the short history of the house was as follows. In 1916 the then owner had let it at 3s. 9d. a week, which was increased soon afterwards to 4s. 3d. a week (a "permitted increase"). That tenancy went on till a date in 1931, and on its determination the owner went into residence himself. In May, 1939, the defendant bought the house and in October let it to the plaintiff at 12s. 6d. a week. The claim was for £28 9s. 3d., two years' excess payments, the difference between 4s. 3d. a week and 12s. 6d. a week.

The attention of the county court judge appears to have been diverted from the real question by arguments in which non-registration, and the 1933 and 1938 Acts, were referred to; but the Court of Appeal considered the position perfectly plain. The house had become decontrolled when its landlord obtained actual possession in 1931. Consequently, it was not one to which the principal Acts applied on 1st September, 1939, the day before the date of the commencement of the 1939 Act. And that Act imposed upon every house within its pecuniary limits the status of a house with a standard rent to be measured by the rent payable on the date when the house had last been let—"however long ago, even if it only once been let, and that, perhaps a century ago," as Scott, L.J., put it.

There is little to say about this; but one or two judicial observations are provocative of thought. Scott, L.J., said that, as far as he knew, the reference back to an earlier letting had never been the subject of litigation, despite the possibilities of considerable hardship. I believe this is so as far as the English courts are concerned; but there is an Irish case, *O'Neill* v. *Duncan* (1921), Ir. L.T.R. 84, in which £19 a year paid under a tenancy, which determined in 1908, was held to be the standard rent when it was let in 1918. But I cannot help thinking that when the learned lord justice made his reference to hardship, and when, later on, MacKinnon, L.J., illustrated the point by the picture of a "previous letting years ago which was an act of charity at a nominal rent by the owner to an aged relative, or at a low or nominal rent to a servant," the second part of the proviso to s. 12 (1) (*a*) of the 1920 statute (which is not modified by the 1939 provisions) was overlooked. The fact that "where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent" at least means that there is some limit to the hardships made possible; and MacKinnon, L.J.'s pronouncement: "The standard rent under this section is to be 'the rent' at which the house was last 'let' before September, 1939, *with no qualification whatever*" does seem to leave the proviso out of account.

Both the lords justices mentioned deplored the absence of any judicial discretion, Scott, L.J., pointing out that s. 6 of the 1933 Act made, in certain circumstances, the average rent of comparable houses in the neighbourhood the test for the standard rent, and drawing the inference that Parliament did not intend to penalise landlords. That Parliament indeed had no such intention was recently emphasised by *Cumming* v. *Danson* (1942), 87 SOL. J. 21 (C.A.) (see "Notebook," 87 SOL. J. 90); but I do not think that the section was enacted with the object of assisting them. Practitioners may recollect that as time went on it became increasingly difficult to obtain evidence of what rent was paid for a house on 3rd August, 1914, when there was evidence that it was let at that date. This, I think, was the reason for passing the section. As Goddard, L.J., observed in his judgment, the argument that it might perhaps happen that one would have to go back 200 or 300 years to find the standard rent in some particular case was not really very impressive; if such a case did happen, it would probably be difficult to prove what the rent was, and the standard rent would therefore be ascertained by reference to the rent of comparable property (i.e., under s. 6 of the 1933 Act).

One argument advanced by the respondent was that legislation should not be construed so as to have a retrospective effect; but this was disposed of by the consideration that that canon of construction applies only to equivocal language.

It was also strenuously argued that the point at issue was one which had not been taken at first instance. On this, Scott, L.J., took the view, from an examination of the notes, that the county court judge did just deal with the matter, as there was some reference to s. 3 of the 1939 Act. Goddard, L.J., however, considered that the point was apparent on the pleadings, but also took the opportunity of observing (presumably in reference to an argument by the appellant) that certain cases (*Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.); *Salter* v. *Lask* [1924] 1 K.B. 754 (C.A.); and *Lefevre* v. *Hirst* (1931), 100 L.J.K.B. 100) merely established that in actions *for possession* a court should refuse an order, though the protection of the Acts was not pleaded, and it was wrong to say that *Smith* v. *Baker & Sons* [1891] A.C. 325 would not apply to Rent Act cases in any circumstances. The *ratio decidendi* in the three cases alluded to was indeed that protection was conferred by limiting jurisdiction, the fetter being placed on the courts and not on the landlord, and this was reflected by r. 18 of the Increase of Rent, etc., Rules, 1920: "Where proceedings are taken in the county court for the recovery of rent of any premises to which the Act applies, or for the recovery of possession, etc., the court shall . . . satisfy itself that such order may properly be made, regard being had to the provisions of the Act." Whether the provision dealing with recovery of rent might not be *ultra vires* might well be considered; however, for present purposes, what should be noted is that Goddard, L.J., has pointed out that a claim for recovery of over-paid rent is not affected, and must therefore be supported or contested by proper pleadings at first instance.

To-day and Yesterday.

LEGAL CALENDAR.

April 26.—Of George Hardinge, Chief Justice of Brecon, Radnor and Glamorgan, who died of pleurisy at Presteign on the 26th April, 1816, his epitaph at Kingston-on-Thames, his birthplace, says: "His Eloquence at the Bar and in the Senate was Conspicuous and in the Seat of Judgment it was Dignified . . . Adorned with Attic Wit, Various in Accomplishment, Cheerful, Animated, Radiant, Singularly Gifted to Charm by his Conversation and Correspondence, He is Deeply Deplored." Byron saw him otherwise, and in "Don Juan" portrayed him thus:—

> "There was a waggish Welsh Judge, Jefferies Hardsman,
> In his grave office so completely skill'd,
> That when a culprit came for condemnation,
> He had his judge's joke for consolation."

Apart from "Attic Wit" and judicial dignity, he claimed celebrity as an author and minor poet.

April 27.—On the 27th April, 1737, the first day of Easter Term, Lord Hardwicke was sworn Lord Chancellor in Westminster Hall. He "took the oaths of allegiance and supremacy and the oath of office, the Master of the Rolls holding the book and the deputy clerk of the Crown giving the oaths, after which the Attorney-General moved that the oath might be recorded." He was only forty-six years old. He held the Great Seal for nearly twenty years.

April 28.—On the 28th April, 1687, Sir Richard Allibone was appointed a Justice of the King's Bench. Though his grandfather had been Rector of Cheyneys, he, like his father, was a Roman Catholic and this recommended him to James II. He was one of the judges at the trial of the Seven Bishops, and the fact that he died in August, 1688, probably saved him from attainder when the Whig revolution triumphed. He was buried at Dagenham.

April 29.—On the 29th April, 1827, the King sent for Lord Eldon, who was resigning from the Chancellorship, and presented him as a token of his regard for his long services a magnificent silver gilt cup and cover. The principal subject round it was the triumph of Bacchus and Ariadne from the Borghese vase. At the bottom was a rich foliage of intricate workmanship. On the top was the coronation medal with a bust of the King guarded by a lion in the attitude of walking. Beneath the cover was the inscription: "The gift of His Majesty King George IV to his highly valued friend, John, Earl of Eldon, Lord High Chancellor of England, upon his retiring from his official duties in the year 1827." With one short interval he had held the Great Seal since 1801. He survived his resignation ten years.

April 30.—On the 30th April, 1805, Richard Haywood was hanged before Newgate for stealing two bolsters and two pillows from the house of Mr. Crabtree, No. 11, Thayer Street, Manchester Square. Before being caught red-handed, he and another man had regularly let themselves in with a key, when the family were out. While being pursued Haywood wounded a man who tried to stop him, striking him a violent blow with a crowbar. In prison he behaved so riotously that he had to be secured to the floor with irons. On the morning of his execution he ate some bread and cheese and drank a quantity of coffee. "Farewell, my lads, I'm just going off. God bless you!" he shouted to the prisoners watching his departure through an upper window, and when they said they were sorry for him, he rejoined: "I want none of your pity. Keep your snivelling till it be your own turn." He ran on to the scaffold with great agility, laughed loudly, led the mob in three cheers, kicked off his shoes among the spectators, and so died.

May 1.—On the 1st May, 1665, Lord Chief Justice Hyde died suddenly on the Bench. He was buried in the Cathedral at Salisbury, with which he had all his life been associated, for he was born nearby at Heale, served for a time as Recorder of the town and represented it in the Long Parliament. A few months after his death his brother was consecrated Bishop of Salisbury. His family had a strong legal connection, for his father was Attorney-General to the consort of James I and one of his brothers became a judge in South Wales; the great Earl of Clarendon was his first cousin. In the Civil War he sided with the King and was accordingly deprived of his recordership by the Parliament. In 1651, Charles II, in flight after the battle of Worcester, found shelter in his house at Heale. On the Restoration he was knighted and appointed a Justice of the Common Pleas, and in 1663 he became Chief Justice of the King's Bench. As a judge he displayed a great horror of anything tending to subversion.

May 2.—On the 2nd May, 1563, the Inner Temple benchers noted that the readers of the Society's Inns of Chancery "have divers times of their own heads, not only left and given over their office, charge and rooms of reading in the said Houses but also have taken upon them to nominate and appoint others to be put in election in the same Houses in their places, and to substitute deputies being not the meetest for the same, without the advice and consent of the bench . . . whereby such inconveniences have ensued as hath tended to the hazard of losing of some of our said Houses, besides other mischiefs thereof ensuing. For avoiding of all which mischiefs hereafter, be it now enacted . . . that no reader of any of our said three Houses of Chancery shall at any time relinquish or give over his said office or room, nor nominate or appoint any other to be put in election in the same office and room that he or they shall so give over, without the especial appointment and nomination of the whole bench in that behalf first obtained."

SETTLEMENTS IN AND OUT OF COURT.

Recently at Clerkenwell Police Court a gaoler had to sit between two men, a British gunner and a Polish sailor, charged with "threatening and abusive behaviour." The bone of contention was the wife of the gunner, and he said: "I want to settle the matter in my own way. What I want is half an hour alone with him." "I'm afraid that is not the legal way," said the magistrate, binding them over. He ordered the husband to be released two or three hours after the other man, telling him: "I thought it wise not to let you out together." The "settlement" which the law wished to prevent was all too reminiscent of the occasion where a county court judge, hearing a dispute between two costermongers over a donkey, said: "Now, my men, I'm going to have my lunch, and before I come back I hope you'll settle your dispute out of court." After the adjournment the parties returned looking somewhat damaged, and the defendant said: "Well, your honour, we've took your honour's advice. Jim's given me a damn good hiding and I've given him back his donkey." Had one of the parties in the Clerkenwell case really meant to get at the other it may be doubted whether one gaoler between them would have been enough to keep them apart. When the murderers Fowler and Milsom were tried at the Old Bailey the same precaution was taken, for Fowler was known to intend an attack on his confederate for a treacherous statement to the police. Just after Hawkins, J., had retired at the end of his summing up to the jury, Fowler hurled himself at his enemy. Milsom was rescued with difficulty, while all the warders available struggled to subdue his assailant amid splintering wood and smashing glass. In the fight he threw them about like dummies.

According to a note in *The Times*, the Bury St. Edmunds museum has been presented with the brief for the prosecution of William Corder for the Red Barn murder at Polstead, Suffolk. The town clerk, Mr. Thomas Wilson, who has given the brief, found it in the strong room of his office, where it has remained since the famous trial at Bury St. Edmunds in 1828. The brief is marked with six guineas as the fee of counsel. It has ten counts reciting the possible means by which Corder could have killed Maria Marten. Corder, who was suspected through a woman's dream, was hanged at Bury St. Edmunds. His scalp and skin, the latter in the form of a book binding, are in the local museum, and his skeleton is used at the local hospital for demonstrating anatomy.

Our County Court Letter.

Child's Contributory Negligence.

IN *Cox and Another* v. *Foster*, at Rugby County Court, the claim was for damages for negligence, resulting in personal injuries to the female plaintiff (a girl aged twelve years) by reason of a collision with the defendant's motor car. Her father was a co-plaintiff in respect of special damages, viz., medical attention and nursing. The female plaintiff had been walking along a lane, in the black-out, in company with her elder brother and another youth. The party were in single file, the plaintiff walking behind the two youths. A motor car was heard, overtaking the party, and they crossed over to the off-side of the road for safety. This was in accordance with the advice in the Highway Code, and ample time was allowed to get out of the way of the car before it overtook the party. Nevertheless the car was being driven over the white line, and its off-side mud wing struck the plaintiff and knocked her into the off-side ditch. The defence was a denial of negligence. There was no allegation of excessive speed, and the defendant was driving slightly away from his near side—in order to avoid cyclists or pedestrians. His insurance company had sent forms, by post, to the plaintiff's brother and the other youth, with a request for a description of how the accident had happened. They had replied, setting out the facts, and had stated in writing that the accident was inevitable in the circumstances. For the plaintiffs it was contended that, if there was evidence of contributory negligence, this was on the part of the two youths—not by the plaintiff herself. She was the youngest of the party, and, if her brother and his friend decided to cross, in front of the oncoming car, it was not contributory negligence by the plaintiff to follow Being only a child, the plaintiff should not be judged by adult standards. His Honour Judge Forbes observed that in Scotland a child was deemed to become liable for negligence or contributory negligence at about the age of seven years. The plaintiff and her companions might have stood on the grass verge, and there waited while the car passed. Instead, they adopted the risky manœuvre of crossing in front. No evidence of negligence by the defendant had been adduced, and the plaintiff had reached an age at which she was capable of having regard for her own safety. Judgment was given for the defendant, with costs.

Sub-tenant Holding Over.

IN *Nadin* v. *Hall*, at Chesterfield County Court, the claim was for possession of a house, which had formerly been occupied, under a statutory tenancy, by one Chell. Chell had given notice to quit on the 12th October, 1942, having previously taken in the defendant (who was his daughter and a widow) as sub-tenant. After Chell had left, the defendant continued in occupation. Her case was that she had become the statutory tenant of the house or part of it. His Honour Judge Willes, held that, if the tenant gave notice to quit, the sub-tenant was no longer protected. If Chell had not given notice to quit, the defendant could not have been moved. An order was made for possession in three months.

Price of Pump.

IN *Smith* v. *Lee*, at Derby County Court, the claim was for £50 as the cost of supplying and installing a new deep well force pump. The plaintiff's case was that she had originally employed the defendant to do some repairs to a house. A dispute had arisen, and the defendant had issued a writ for the cost of work done and materials supplied. The District Registrar had referred the action for trial by an architect, as special referee. The action was duly tried, and the special referee issued his certificate for the amount due. The plaintiff's case was that this amount was £50 more than it otherwise would have been, as the defendant had undertaken to supply and instal the pump in question. The amount due under the certificate had been paid, but the defendant had not installed the pump. At the first hearing in the county court, it was held that the special referee's certificate was a recorded judgment of the High Court, and the county court had no jurisdiction to investigate the circumstances in which it was given. Judgment was given for the defendant, with costs. The Court of Appeal held that the action should not have been tried on demurrer. A new trial was therefore ordered. At the second hearing, the special referee gave evidence for the plaintiff, an objection as to the admissibility of his evidence being overruled. The defendant's evidence was that, although there had been some discussion about a new pump, he had stipulated that, if the plaintiff wanted one, she must pay extra for it. No undertaking to supply a new pump had been given. It was pointed out for the defendant that the alleged undertaking was not mentioned in the special referee's certificate. His Honour Judge Willes held that, although the defendant had been awarded £50 more than would otherwise have been the case (had it not been assumed that he had undertaken to instal a new pump) nevertheless it was doubtful whether he understood he was also abandoning all claim to be paid for the defective pump. In the circumstances, there was no enforceable contract between the parties. Judgment was accordingly given for the defendant, with costs.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Road-making Charges as between Vendor and Purchaser.

Q. My client, J H has recently entered into a contract to purchase a dwelling-house, and on my making the usual local search, a charge for street works under s. 150 of the Public Health Act, 1875, is disclosed, dated 25th February, 1932, the amount being £30 principal and interest to date outstanding. This charge was not disclosed in the contract, and on my writing the vendor's solicitors, requiring the same to be discharged before completion, I was informed that the vendor will not discharge the same, and that my client must take over the liability as purchaser. In support of this contention, the vendor's solicitors refer me to the case of *Re Forsey and Hollebone's Contract*, and p. 116 of vol. I of "Emmett's Notes on Perusing Titles," 12th ed. This authority in my opinion does not meet the case, and this is supported by the criticism of this case on p. 164 of "Emmett," and the statements under the heading "Expenses of road-making" on pp. 48 and 49 of vol. II of "Emmett," with s. 43 of the Law of Property Act, 1925. The contract was made subject to the local conditions of sale, and whilst these do not incorporate The Law Society's Conditions of Sale, it is provided by No. 5 of the local conditions (*inter alia*): "The purchaser shall pay the remainder of the purchase-money on the completion of the purchase on the day and place hereinbefore provided for and up to that day the rents shall be received or possession retained and the outgoings discharged by the vendor." On p. 49, vol. II, of "Emmett" it is stated that road-making expenses are covered by the expression "outgoings" in the above condition. If the vendor's solicitors are correct, it would involve searches in the Local Land Registry and H.M. Land Registry before signing the contract in every case, but this is not the practice, and I have never before met with any hesitation on the part of vendor's solicitors to see that charges of this nature were discharged before completion. I shall be glad to have your opinion on the matter.

A. If a vendor contracts to sell an unincumbered fee simple (or other estate) then, surely, he must do so, whether or not the purchaser has notice of an incumbrance. The decision of the Court of Appeal in *Re Forsey and Hollebone's Contract* [1927] 2 Ch. 379, goes no further than to say that a resolution to adopt a town-planning scheme registered as a local land charge is not in itself an incumbrance; it merely is an indication that in future an incumbrance may (and probably will) come into being. The observations of Eve, J., in the inferior court on the question of notice were not dealt with in the higher court. In our subscriber's case there was a definite incumbrance capable of being cleared off by the vendor, and in our opinion he must do so. Whether or not the purchaser had notice of the incumbrance (and he had by virtue of the registration) seems to us quite immaterial. Even if the above opinion is incorrect the vendor is under obligation to clear off the charge as it is an "outgoing." We quote the following from note (F) on p. 354 of vol. I of "Prideaux," 23rd ed.: "The term 'outgoings' includes all liabilities incurred in respect of the property before the day fixed for completion for drainage, paving or other works (see *Midgley* v. *Coppock* (1879), 4 Ex. D. 309; 48 L.J. Ex. 674; *Tunns* v. *Wynne* [1897] 1 Q.B. 74; 66 L.J.Q.B. 116; *Barsht* v. *Tagg* [1900] 1 Ch. 231; 69 L.J. Ch. 91; Dart, 8th ed., 119*n* and 129 . . .")

Will—Construction—Gift of "personal estate and otherwise"—What passes.

Q. A testator died on the 1st January, 1943, possessed of personal estate and seised of real estate. By his will dated the 5th January, 1938, he made the following gift and bequest, namely: "I give and bequeath to my wife A B everything I possess at the time of my death, personal and otherwise, to do with as she wishes and thinks best." The wife survived her husband, the testator, and she is the sole executrix of the will. Does the gift and bequest by the will include the real property of which he died seised in fee simple?

A. While we have not been able to trace an authority on the point submitted, which we regret, we feel able to say with some confidence that in our opinion the whole estate real and personal passes. It is only real estate which is "otherwise" than personal estate. It is not a question of "*expressio unius exclusio alterius*"; on the contrary, real estate is implicitly contrasted with personal estate (and also given). The fact that no words apt to a devise, as contrasted with a gift of personalty, are used is immaterial. Indeed, the word "give" is not quite unsuitable to a devise of realty. We would further observe that the actual gift is of "everything I possess at the time of my death," while the words "personal and otherwise" are merely in amplification of explanation of the universal gift; we do not feel that they are in any way restrictive.

Notes of Cases.

COURT OF APPEAL.

Frank Smythson, Ltd. *v.* G. A. Cramp & Sons, Ltd., and the Surrey Manufacturing Co.

Lord Greene, M.R., MacKinnon and Luxmoore, L.JJ.
15th February, 1943.

Copyright—Infringement—Diary—Collection of tables—Copyright Act, 1911 (2 & 3 *Geo.* 5, *c.* 46), *s.* 8—*Libel—Letter by owner of copyright to vendors—Privilege.*

Appeal from a decision of Uthwatt, J.

The plaintiffs were publishers of diaries, and from 1933 onwards published a diary known as "Liteblue" diary, which contained a compilation of tables and information which had been collected and arranged by one S for the plaintiffs. In this action they claimed damages for the infringement of their copyright in the "Liteblue" diary against the defendants, who were also publishers of diaries. It was admitted that the defendants had published a diary based on a copy of the plaintiffs' diary made by E, a former employee of the plaintiffs. After the issue of the writ, the plaintiffs wrote to a number of firms selling diaries published by the defendants telling them that a writ had been issued and an injunction was sought to restrain the defendants infringing the plaintiffs' copyright. The defendants counter-claimed for damages for libel in this letter. Uthwatt, J., dismissed the action and the counter-claim. The plaintiffs appealed and there was a cross-appeal in respect of the counter-claim.

Lord Greene, M.R., said that the diary fell into two parts, one was the collection of the tables, inserted at the beginning of the diary, and the other was the general arrangement and lay-out of the body of the diary. In his opinion the latter part of the diary was not a good subject of copyright. The only part of the work to which copyright could attach was the tables at the beginning. E had appropriated the work done by S and copied the plaintiffs' diary in its entirety. Taking all the evidence into consideration, it was established that there was a sufficient amount of skill, labour and judgment put into the selection of the tables to attract copyright. The plaintiffs succeeded on the issue of copyright, but only as regards the collection of tables. The defendants stated that they were not aware that copyright subsisted in the diary and had not reasonable ground for suspecting that it did, and claimed to be within s. 8 of the Copyright Act, 1911. Section 8 could not cover this case. Not merely must a defendant, who relied on that section, show that he was not aware that copyright subsisted—and that would not protect him if his ignorance was due to a mistake of law—but he must have no reasonable ground for suspecting that copyright subsisted. The defendants had made no inquiries or investigations. The section was not designed to protect people who acted in that way. With regard to the question of libel, he agreed with Uthwatt, J., in holding the occasion was privileged, as there was a common interest between the plaintiffs and the recipients of the letter.

MacKinnon, L.J., delivered a judgment agreeing.

Luxmoore, L.J., dissented, holding that the existence of copyright in the plaintiffs had not been established.

Appeal allowed. Leave to appeal to the House of Lords.

Counsel: *K. E. Shelley*, K.C., *G. T. Aldous* and *Alan Stevenson*; *D. N. Pritt*, K.C., and *F. Gahan* (for *H. C. Leon*, on war service).

Solicitors: *Henry Pumfrey & Son*; *Rubenstein, Nash & Co.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

CHANCERY DIVISION.

Gillespie *v.* Burdis.

Simonds, J. 1st April, 1943.

Rectification—Separation deed—Sums payable to wife "during her life"—Husband dies—Agreement of husband and his and the wife's solicitors to limit provision to joint lives—His personal representatives seek to rectify deed—Common intention.

Witness action.

By a deed of separation dated 17th February, 1939, it was provided that the husband should pay "to the wife during her life the monthly sum of £12." At the same time the wife had released certain rights in favour of her husband. The husband died on the 5th November, 1940. The defendant, his executrix, had failed to pay to the wife the sums due under the agreement. The wife in this action claimed payment of the arrears due under the deed. The defendant counter-claimed to have the deed rectified, so as to make the deed operate only during the joint lives. It appeared from the evidence that the husband, his solicitor, and the wife's solicitor, had agreed that his liability should be limited to his life. The wife gave evidence, which the learned judge accepted, that, when she executed the deed, she thought she was getting a provision for her life.

Simonds, J., said the question was whether he could say it was the common intention of the parties that something should be in the agreement which was not in it. He could only come to that conclusion if the wife was for some reason debarred from telling the court what was her intention when she executed the deed. He could see no principle by which she was so debarred. He did not think she intended to authorise her solicitor to conclude any agreement on her behalf. A solicitor, unless the circumstances were exceptional, was not an agent to conclude a bargain between the parties. There was nothing which would justify him in holding the wife's solicitor was in this case her agent to conclude an agreement on her behalf, so that his intention was to be imputed to her and preclude her from saying the document expressed her real intention. That being so, he could not hold that the defendant had established her right to rectify

the document on the ground that it did not express the common intention of the parties. Accordingly, the counter-claim must be dismissed.

COUNSEL: *C. L. Fawell; B. S. Tatham.*

SOLICITORS: *Robinson & Bradley*, for *Smirk & Thompson*, Newcastle-upon-Tyne; *Maples, Teesdale & Co.*, for *Lambert & Lambert*, Gateshead.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Taylor *v.* Jenkins.

Uthwatt, J. 2nd April, 1943.

Settled land—Power of leasing—Tenant for life proposed to grant lease—Remainderman offers to take lease—Right to curtail power of tenant for life—Settled Land Act, 1925 (15 *Geo.* 5, *c.* 18), *ss.* 41, 101.

Motion.

The defendant, who was tenant for life of some 35 acres of agricultural land in Glamorgan, gave notice to the Settled Land Act trustees of her intention to lease the settled land. The three plaintiffs, the tenant for life in remainder and his two children, who, together were entitled in reversion to the property, started an action claiming an injunction to restrain the defendant from exercising her statutory powers of leasing except to the first plaintiff, unless he was unwilling to pay the best rent obtainable. By this motion the plaintiffs sought an interim injunction. The first plaintiff in his evidence stated he owned a farm adjoining the settled land which was worked by himself and his son, the second plaintiff, and they were anxious not to be deprived of the future enjoyment of the settled land. He was prepared to take a lease of the land at the best rent obtainable. The defendant, who had not replied to the plaintiff's offer to take a lease, filed no evidence.

UTHWATT, J., said that the defendant had chosen to file no evidence. He was entitled to infer from this that there was a case for questioning her good faith with regard to the transaction she had in mind. She could suffer no loss in accepting the plaintiff's offer. In these circumstances the right course was to preserve the present position and to grant an injunction restraining the defendant from leasing or disposing of the settled land pending the trial of the action, she being at liberty to restore the motion on receiving a *bona fide* offer to purchase or lease made by a third party.

COUNSEL: *J. M. Jopling; Sir Norman Touche.*

SOLICITORS: *Tamplin, Joseph, Ponsonby, Ryde & Flux*, for *Hanson and Nash*, Swansea; *Field, Roscoe & Co.*, for *Collins, Woods & Vaughan Jones*, Swansea.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Mash and Austin, Ltd *v.* Postlethwaite.

Charles, Tucker and Croom-Johnson, JJ. 16th April, 1943.

Emergency legislation—Soft fruit—Restrictions on sales by "growers"—Meaning of "grower"—Person in whom property in fruit vested before severance—When property vested in purchaser of growing fruit—Defence (General) Regulations, 1939 (*No.* 927), *reg.* 55 (1) (*a*)—*Soft Fruit (Maximum Prices) Order*, 1942 (*No.* 1138), *arts.* 1 *and* 3—*Sale of Goods Act*, 1893 (56 & 57 *Vict. c.* 71), *s.* 18, *rr.* 2 *and* 3.

Appeal by way of case stated from convictions ordered by Sir Bertrand Watson, Chief Magistrate, at Bow Street Police Court, on four summonses consequent upon which the appellants were sentenced to pay a fine of £35, three of £10, and eight guineas costs. The summonses charged the appellants with contraventions of the Soft Fruit (Maximum Prices) Order, 1942 (No. 1138), arts. 1 and 3 of which provide that, "except under and in accordance with the terms of a licence granted for the purposes of this article by or on behalf of the Minister—(*a*) no person shall sell any soft fruit of which he is the grower except (i) to a licensed preserver; (ii) to a person for the purposes of his business as a wholesaler of soft fruit which was regularly carried on by him during the year 1940; or (iii) through the agency of a selling agent who regularly carried on the business of a selling agent during the year 1940, to a person for the purposes of his business as a wholesaler or retailer of soft fruit; (*b*) no person other than a person to whom a grower is authorised to sell soft fruit under paragraph (*a*) hereof shall buy soft fruit from a grower." "Grower" is defined in art. 1 in relation to any soft fruit as including any person in whom the property in the fruit is vested before the severance thereof from the land. The appellants agreed to buy from P certain strawberries grown by P on terms contained in two letters dated 11th June, 1942, the first of which, from the appellants to P, stated: "Cheque enclosed value £800 for two pieces of the growing crop of strawberries, roughly two acres each, which you showed us at your farm at Cudham namely piece of strawberries at the back of Woodland's House, also piece of strawberries below packing station on right. The £800 to include cost of picking, packing and delivery to our premises daily in 2-lb. chips until this season's crop is finished." The second letter, signed by a director of the appellants and P, stated: "We mutually agree that should the crop of strawberries and the 2-lb. chips not realise £800 at the controlled price, P will refund the difference, and we (the appellants) agree to pay for all in excess of £800 if the crop realises more. In due course the sellers picked, packed and delivered the strawberries in chips to the appellants at a cost of 10d. per lb. The appellants sold the strawberries to the proprietors of various hotels and cafés at 1s. 2d. per lb. The controlled price at which a grower was allowed to sell was 7½d. per lb. None of the buyers was a person to whom a grower was authorised to sell by art. 3 of the Soft Fruit (Maximum Prices) Order, 1942, and the appellants had no licence granted for the purpose of the article from the Minister. The respondent contended at the police court hearing that the appellants were growers, and had therefore contravened the order. Section 18 of the Sale of Goods Act, 1893, provides rules for ascertaining the intention of the parties as to the time at which the property in goods is to pass to the buyer in the absence of a different intention appearing, and rr. 2 and 3 relate to contracts for the sale of specific goods which either have to be put into a deliverable state (r. 2) or weighed, measured or tested, etc., to ascertain the price. The property in such cases does not pass until such thing be done and the buyer has notice thereof.

CHARLES, J., said that the magistrate was wrong in holding that there had been any vesting of the ownership of the fruit in the appellants before severance. He referred to the terms of the contract under which the sellers were under an obligation to pick, pack into chips or baskets, and deliver the fruit to the appellants at their premises. The learned judge referred to the rules under s. 18 of the Sale of Goods Act, 1893 (which set out the rules as to the time when property in goods sold is to be deemed to pass, in the absence of agreement to the contrary) and said that by virtue of rr. 2 and 3 the property could not pass in this case before severance from the soil. It followed that no offence had been committed. The appeals would be allowed and the convictions quashed, with costs in that court and the court below.

TUCKER and CROOM-JOHNSON, JJ., agreed.

COUNSEL: *Harold Simmons; Colin Duncan.*

SOLICITORS: *Leader, Henderson & Leader; The Treasury Solicitor.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Owners of the Motor Vessel "Lubrafol" *v.* Owners of ss. "Pania."

Bucknill, J. 11th January.

Practice—Company domiciled in Belgium issues writ—Subsequent invasion of Belgium by enemy—Transfer of domicile of company to U.S.A.—Whether "enemy" at common law—Right to stay.

Motion by the defendants for a stay of proceedings in an action and reference for damages arising out of a collision between the plaintiffs' vessel and the defendants' ship, on the ground that the plaintiffs were alien enemies at common law.

The collision took place on 10th October, 1939. The plaintiffs were a Belgian company and the defendants an Italian company. At the date of the issue of the writ on 20th October, 1939, the plaintiffs carried on business at Antwerp. On 14th November, 1939, the defendants admitted liability. On 2nd February, 1940, the Belgian Government made an Order in Council by which any Belgian commercial company might, without the company losing its Belgian nationality, be transferred provisionally to any place other than that specified in its statutes and even abroad by a simple decision of the administrative organ of the company or its directors, the manager or the management committee. The decision had to be notified to the convenient registry and published as soon as possible in the *Annexe du Moniteur Belge*. Belgium was invaded by the Germans in May, 1940. In March, 1942, an order was made by the Belgian Government providing that the head office of any company might, without the company losing its nationality, be temporarily removed to any place other than that fixed in the company's statutes and also abroad, simply by the decision of the agency in charge of the management of the company, the managing board, the managers, or board of managers. For the decision to be valid (1) the head office had to be removed to unoccupied territory, and (2) it was to be taken over in unoccupied territory by persons residing there. The transfer of the head office was not to be valid unless cl. 3 was complied with. That clause provided that the obligation of effecting the deposition of acts, extracts of acts or documents mentioned in the order concerned all the companies having properties or seats situate outside occupied territories. It further provided that the deposition was to be placed with the diplomatic agent within whose area the act was passed. On 20th June, 1940, the board of management passed two resolutions: (1) extending the mandates of the management until a shareholders' ordinary general meeting should be held, and (2) transferring the legal domicile of the company from Antwerp to an address in Pittsburg, Pennsylvania, U.S.A., and suspending the powers of directors and managers residing elsewhere than in U.S.A. Directions were given to send a copy of the minutes of the meeting to the register of commerce and to the *Moniteur Belge*. A summons was issued on 5th June, 1942, to amend the writ by putting the plaintiffs' address as the Pittsburg address, but it was dismissed. A letter was also sent by the plaintiffs' solicitors to the defendants' solicitors before the summons pointing out that the plaintiffs' head office and management had been removed to the U.S.A.

BUCKNILL, J., said that he was quite satisfied that every effort had been made by the Belgian company to transfer their place of business to the United States of America in order to avoid the legal difficulty which subsequently arose in *V/O Sovfracht* v. *Gebr. van Udens Scheepvaart*, 59 T.L.R. 101. Viscount Simon, L.C., said in that case that the test of enemy character was an objective test, turning on the relation of the enemy power to the territory where the individual voluntarily resided or where the company was commercially domiciled or controlled, and it was not a question of nationality or patriotic sentiment. Dicey, "Conflict of Laws," 5th ed., vol. 19, stated: "The domicile of a corporation is the place considered by law to be the centre of its affairs which, in the case of a trading corporation, is its principal place of business, i.e., the place where the administrative business of the corporation is carried on." It was putting too high a burden on the company to require it to prove that the business was no longer being carried on in Antwerp. The Belgian company could not reasonably have done more than they did. They had done their best to comply with the Belgian law. The "Lubrafol," until lost was transferred to Panama and flew the Panamaan flag. The facts of this case distinguished it from *V/O Sovfracht* v. *Gebr. van Udens Scheepvaart*, *supra*. Motion dismissed.

COUNSEL: *Sir Robert Aske*, K.C., *Owen Bateson*, *F. A. Sellers*, K.C.; *E. W. Brightman.*

SOLICITORS: *Crawley & de Reya; Botterell & Roche.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

E.P. 402. **Air Ministry Constabulary** (Employment and Offences) Order, April 1.

E.P. 535. **Consumer Rationing** (No. 17) Order, April 12. (Amending S.R. & O., 1941, No. 2000).

E.P. 582. **Defence** (Agriculture and Fisheries) Regulations, 1939. Order in Council, April 20, adding reg. 28A.

E.P. 583/584 (as one document). **Defence** (Armed Forces) Regulations, 1939. Orders in Council, April 20, amending regs. 9 and 13.

E.P. 573. **Factories** (Canteens) Order, April 7.

E.P. 571. **Growing of Seed Crops** (Control) Order, March 31.

No. 606. **Post Office** (Execution of Documents) Warrant, April 13.

No. 580. Post Office. Imperial and Foreign Post Amendment (No. 1) Warrant, March 30.

Parliamentary News.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 22nd April :—

Agriculture (Miscellaneous Provisions).
Army and Air Force (Annual).
British Nationality and Status of Aliens.
Courts (Emergency Powers).
Evidence and Powers of Attorney.
Liverpool Hydraulic Power.
National Loans.
Nurses.

HOUSE OF LORDS.

Catering Wages Bill [H.C.]
Read First Time. [21st April.

Sunderland Corporation Bill [H.C.]
Read Second Time. [21st April.

HOUSE OF COMMONS.

Finance Bill [H.C.]
Read First Time. [21st April.

Settled Land and Trustee Acts (Court's General Powers) Bill [H.L.]

Town and Country Planning (Interim Development) Bill [H.C.]
Read Second Time. [20th April.

War Damage Bill [H.L.]
Read First Time. [21st April.

Notes and News.

Honours and Appointments.

Mr. T. ROBERTS, the War Damage Commission's Regional Manager for Region No. 10 (Manchester), has been appointed Deputy Director of Claims at the Headquarters of the Commission in London. He will be succeeded by Mr. J. L. Moffat.

Notes.

In the advertisement of The British and Foreign Bible Society, which appeared at p. iv of last week's issue, the time of the reception should have read "Wednesday, 5th May, at 3.30 p.m." and not "5.30 p.m." as printed.

Mr. Henry Edward Smith, manager and secretary of The National Guarantee and Suretyship Association, Limited, 17, Charlotte Square, Edinburgh, retired on Tuesday, 13th April, after over forty-three years' service with the association. Mr. Alexander Gallie, A.C.I.I., has been appointed to succeed Mr. Smith as manager and secretary.

LAW SOCIETY'S EXAMINATIONS IN GERMAN PRISON CAMP.

The Law Society announces that the following candidates (whose names are in alphabetical order) were successful at the final examination held in Oflag VII B, Germany, in February :—

Dolphin, H. B., B.A., Oxon ; *Fowler, G. M. T., *King, C. N., *Long, J. R., LL.B., Birmingham, Martin, A. B., Pickard, D. L. L., *Sherbrooke, J. P., Southall, A. F., Spiers, D. B., Thomas, J.B. Number of candidates, 10 ; passed, 10.

*These candidates have been awarded "distinction," and will be permitted, at the discretion of the Council to enter for any honours examination held within two years of the cessation of hostilities.

The following candidates (whose names are in alphabetical order) were successful at the intermediate examination held in Oflag VII B. :—

LEGAL PORTION.—Stebbings, D. L. Number of candidates, 1 passed, 1.

TRUST ACCOUNTS AND BOOK-KEEPING PORTION.—Dowson, W. F. G., B.A., Oxon, Smailes, R. B., LL.B. Leeds. Number of candidates, 2 ; passed, 2.

The following candidate was successful at a special examination in the subject of Trust Accounts and Book-keeping held in Oflag VII B :—

Morson, P. L., B.A., Oxon.

THE SOLICITORS' CLERKS' PENSION FUND.

The thirteenth annual meeting of this Fund was held on Thursday, 15th April, 1943, in the Council Chamber of The Law Society's Hall, Colonel W. Mackenzie Smith, D.S.O., presiding. The chairman submitted the report of the committee of management for 1942 and the accounts for that year. After stating that the membership had risen to 1,265, he said that the income figure was now over £29,000 per annum, and that the expenditure figure was over £4,000 per annum, so that income over expenditure exceeded £25,000 per annum. Seven members were receiving pension. Management expenses were light. Investments held by the Fund totalled £216,123. The chairman also referred to certain amendments of rules which were to be submitted to the meeting. The adoption of the report and accounts was seconded by Mr. A. G. B. Chittenden (Ashford, Kent) and the motion was carried.

The meeting re-elected Mr. F. C. Leaver, Messrs. Linklaters & Paines, a member of the committee of management, and the chairman reported that Mr. Ian D. Yeaman (Cheltenham) had been reappointed by the Council of The Law Society. Amendments of rules were agreed to and votes of thanks were passed. The office of the Fund is Maxwell House, Arundel Street, London, W.C.2.

GENERAL COUNCIL OF THE BAR.

From the annual general meeting of the Bar, the following message was sent to the Ambassador of the U.S.S.R. under the signatures of the Attorney-General (Rt. Hon. Sir Donald Somervell, K.C., M.P.) and the Chairman of the General Council of the Bar (Sir Herbert Cunliffe, K.C.) :—

"A cordial message to the lawyers of Soviet Russia, of comradeship and confidence in final victory, of congratulations on the magnificent efforts and achievements of the Russian army against the common enemy and our deep sympathy in the losses suffered in the field and in the terrible brutalities inflicted on the population in occupied territory by the German forces."

The Embassy recently transmitted the following reply :—

"Warm thanks for congratulations on the occasion of the splendid successes of the Red Army in the fight against our common enemy. We are firmly convinced that the efforts of the English Lawyers like the whole of the English people will bring closer the hour when by our Armies' joint offensive action the final victory will be achieved over the cruel and wily enemy, and Lawyers of all freedom loving countries will be able to take part in restoring legal norms destroyed by Hitlerism in all occupied countries and in merciless punishment of those guilty of these atrocious misdeeds."

Signed : Chairman of the Presidium, Collegium of Lawyers of the City of Moscow, GORBULEV.
Chairman of the Presidium, Collegium of Lawyers of the City of Leningrad, KUDJIEV.
Chairman of the Presidium, Collegium of Lawyers of the City of Stalingrad, SHUMOV.
Lawyers of Moscow, BRAUDE, KOMMODOV, OTSEP, KAZNACHEV, DINESSMAN.
Lawyer of the Uzbek Republik, STEKOLSHCHIKOV.
Lawyer of the Ukranian Republic, VETVINSKY.

WAR DAMAGE REPAIRS.

The War Damage Commission issued in the *London Gazette* of 23rd April a notice which affects the following areas :

BOROUGH OF CHATHAM : An area comprising :—

(*a*) All the hereditaments in the area bounded by the centre line of the following streets : On the north, Ordnance Terrace ; on the east, that part of Ordnance Street which lies between Ordnance Terrace and Perry Street ; on the south, Perry Street and its extension westward ; on the west, Priest Dale and Fort Pitt Street.

(*b*) The hereditaments known as The New Fox and Hounds public-house, and Nos. 138 to 174 (even numbers inclusive) Ordnance Street ; Nos. 3, 5 and 7, Perry Street ; Nos. 1 to 11 inclusive Elmore Row.

(*c*) The hereditaments known as Fort Mansions and Nos. 4 to 44 (even numbers inclusive) and the Carpenters Arms public-house, Fort Pitt Street ; Nos. 3 to 47 inclusive Priest Dale.

A plan of the area may be inspected at the Town Hall, Chatham.

BOROUGH OF MALDEN AND COOMBE : An area comprised by the hereditaments known as Nos. 2, 4a, 4, 6, 8, 10, 12, 14 and 16, Westbury Road.

A plan of the area may be inspected at the Municipal Offices, New Malden, Surrey.

The notice is issued under s. 7 (2) of the War Damage Act, 1941, whereby provision is made for securing that the making of payments by the Commission in respect of war damage shall have regard to the public interest. The publication of the notice in the *Gazette* is, therefore, of great importance to all those with interests in war damaged property, and particularly to those professionally concerned with work on such properties, since upon them must, in practice, fall the responsibility, on behalf of their clients, for seeing that the requirements of the Act are complied with.

The effect of the notice is that any person proposing to execute any works for the repair of war damage (other than temporary works) in the named areas must first inform the Commission. That body in its turn will consult the appropriate local and planning authorities to ascertain whether the carrying out of the proposed works would conform with their intentions regarding re-planning and other public interests. The condition laid down regarding notification will be strictly enforced, and the carrying out of any works in the named areas, without prior notification to the Commission, will render the person doing such works liable to forfeit the right to repayment by the Commission. The powers conferred upon the Commission by the Act are exercisable only in direct relation to war damage.